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IN THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA FIRST APPELLATE DISTRICT
DIVISION TWO

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1 Civil No. 13,926

ELMER REMMER,
Petitioner and Appellant,

vs.

THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND HONORABLE HARRY J. NEUBARTH AS PRESIDING JUDGE THEREOF,
Respondent and Appellee

JURISDICTIONAL STATEMENT

This Jurisdictional Statement is made pursuant to Rule 12 of the Rules of the Supreme Court of the United States and accompanies the petition for allowance of an appeal to the said Supreme Court.

In the trial court appellant sought a writ to prohibit the trials of appellant and others who had been arrested in raids of a social club for keeping and maintaining a place where draw poker and draw low ball poker were carried on and conducted in alleged violation of section 288 of the Police Code of San Francisco, enacted in 1903. The trial court made its order denying a writ of prohibition.

The validity of the statute on the ground of its being repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States was first drawn in question by the petition for writ of prohibition. The same question was repeatedly urged and presented at all stages on appeal from the order of the trial court denying the writ.

A statement of the grounds upon which it is contended that substantial constitutional questions are involved is as follows:

1. The playing of draw poker or draw low ball poker in a social club or private home is a fundamental right of free men. Deprivation of that right is here involved because section 288 of the Police Code of San Francisco has been held to validly prohibit it. A substantial constitutional question is therefore involved. (*Cantwell* v. *State*, 310 U. S. 296.)

2. Section 288 of the Police Code of San Francisco is an ambiguous and uncertain law. It is sought to deprive appellant of his liberty for violation of that law. A substantial constitutional question is therefore presented. (*Lanzetta* v. *New Jersey*, 306 U. S. 451.)

3. Section 288 of the Police Code of San Francisco is an archaic law. It was enacted in 1903. Changed conditions will no longer permit it to be said that free men may not play draw poker or draw low ball poker in a social club or private home. Appellant is threatened with deprivation of his liberty under a law which, if valid when enacted in 1903, has nevertheless been invalidated by changed conditions. A substantial constitutional question is therefore involved. (*Nashville, C. & St. L. Ry. Co.* v. *Walters*, 294 U. S. 405.)

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two, is officially reported in the advance sheets as 90 A. C. A. 1042.

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It is not officially reported in permanent form. A copy of the opinion is annexed hereto as Exhibit A. The trial judge wrote an opinion on denial of the writ of prohibition. It is not officially reported in any permanent form. A copy of the opinion is annexed hereto as Exhibit B.

1. The Jurisdiction of the Supreme Court of the United States

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States upon appeal to review the judgment in question is 28 U. S. C., a Judiciary and Judicial Procedure, sec. 1257 (2).

From the opinion of the state court of last resort it clearly appears that a state statute, to wit, section 288 of the Police Code of San Francisco was held constitutional as against the claim of appellant that it was unconstitutional. It is true that the opinion does not expressly refer to any provision of the Federal Constitution. But the situation here parallels that reviewed by the court in *New York* v. *Zimmermann*, 278 U. S. 63. Here, as there, the state appellate procedure required no assignment of errors, but merely required that the points on appeal appear in the briefs. (Rule 15(a), Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California.) At pages 19 and 23 of his opening brief on appeal appellant specifically challenged section 288 of the Police Code of San Francisco as repugnant to section 1 of the Fourteenth Amendment to the Constitution of the United States. That challenge was urged and repeated in all subsequent stages of the appeal. Jurisdiction of this court is therefore supported by the case just cited. It is also apparent that decision of the federal question was necessary to the appeal, and that the opinion of the District Court of Appeal could not have been given

without deciding that said section 288 was not repugnant to the said Fourteenth Amendment. Jurisdiction is therefore supported by *Lynch* v. *People of New York*, 293 U. S. 52.

2. The Statute, the Validity of Which Is Involved

The statute is section 288 of the Police Code of the City and County of San Francisco, State of California, enacted in 1903. It provides:

> "It shall be unlawful for any person to keep or maintain, or visit, or to contribute to the support of any house or place where gambling is carried on or conducted, or to knowingly let or underlet, or transfer the possession of, any house or premises for use by any person for said purpose."

3. The Date of the Judgment Sought to Be Reviewed

The judgment of the District Court of Appeal of the State of California, First Appellate District, Division Two, was filed March 29, 1949. It became final as to that court 30 days after such filing. (Cal. Rules on Appeal, Rule 24 (a), 22 Cal. 2d 17.) But the Supreme Court of the State of California had jurisdiction to grant a hearing in the cause providing a petition for hearing by the said Supreme Court was filed within 40 days after the filing of the decision of the District Court of Appeal. (Cal. Rules on Appeal, Rule 28 (b), 22 Cal. 2d 20.) Within the said 40 days petitioner and appellant duly filed such petition for a hearing by the said Supreme Court after decision by the District Court of Appeal, and the petition was denied by the said Supreme Court on May 26, 1949. The judgment of the said District Court of Appeal is therefore a final judgment in the highest court of the state of California in which a decision in the

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cause could be had. Application for appeal to the Supreme Court of the United States was presented June 24, 1949.

Dated, San Francisco, June 24, 1949.

SIMEON E. SHEFFEY,
JOHN R. GOLDEN,
LESLIE C. GILLEN,
Attorneys for Petitioner and Appellant,
Mills Building, San Francisco 4.

"EXHIBIT A"

(Vol. 90 A. C. A. 1042)

IN THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

DIVISION TWO

1 Civil No. 13,926

ELMER REMMER, *Petitioner and Appellant,*

vs.

THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, State of California, and HONORABLE HARRY J. NEUBARTH, as Presiding Judge Thereof, *Respondents*

MENLO SOCIAL CLUB, INC., (a corporation), *Plaintiff and Appellant,*

v.

EDMUND GERALD BROWN as District Attorney, MICHAEL MITCHELL as Chief of Police and J. WARNOCK WALSH as President of the Police Commission of the City and County of San Francisco, State of California, *Defendants and Respondents*

1. Gaming—Gaming Contracts.—Draw poker and draw low ball poker, when played for money, are gambling games.

2. Id.—Validity of Ordinances.—An ordinance specifically prohibiting any of the gambling games enumerated in Penal Code, Sections 330, 331, is invalid as an unconstitutional duplication of the statute (Const., art. XI, Section 11); but where the ordinance applies in general terms to gambling as such, it is valid with respect to games not prohibited by state law, such as draw poker and draw low ball poker.

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3. Municipal Corporations—Ordinances—Partial Invalidity.—The fact that an ordinance is so framed that its entire prohibition, including both the valid and the invalid parts thereof, is stated by the same words, does not necessarily show that the valid part is inseparable from the invalid.

4. Gaming—Validity of Ordinances.—No possibility of double jeopardy is presented by Pen. Code, Section 331, which prohibits keeping or maintaining a place where the gambling games are enumerated in Pen. Code, Section 330, are played, and an ordinance which prohibits keeping or maintaining a place in which gambling games as such are played, where the ordinance is applied to a house maintaining a game of draw poker not prohibited by Section 330; nor is there any such conflict between Pen. Code, section 318, prohibiting prevailing upon another to enter a gambling house, and such ordinance which prohibits keeping or maintaining such a house.

5. Id.—Validity of Ordinances.—A municipality may merely regulate commercial gambling or may suppress and prohibit it in any manner not conflicting with state law, in view of the policy of the state in opposition to such gambling in all its forms and of the general delegation of police power contained in Const., art. XI, section 11; and, the Legislature having by Pen. Code, section 318, prohibited any person from prevailing upon another to enter a place where gambling of any kind is carried on, a municipality may give expression of the same state policy by prohibiting the keeping or maintenance of such a place.

Opinion

In *Remmer* v. *The Municipal Court et al.*, the petitioner sought a writ to prohibit the trials of appellant and others who had been arrested in raids of the Menlo Social Club for keeping and maintaining a place where draw poker and draw low ball poker were carried on and conducted in violation of section 288 of the Police Code of San Francisco.

In *Menlo Social Club, Inc.* v. *Brown, as District Attorney, et al.*, an injunction was sought to prevent further raids

and arrests on similar charges. The court denied both the writ of prohibition and the injunction, and these two appeals were taken, and are presented on one record.

Appellants challenge the constitutionality of section 288 on the grounds (1) that it is a duplication of state law, hence in conflict therewith; (2) that the portions thereof which are not conflicting are so inseparable from those which are, that the whole section must fall, and (3) that the legislation is unreasonable.

The first two grounds may be discussed together.

Section 330 of the Penal Code reads as follows:

"Every person who deals, plays, or carries on, opens, or cause to be opened, or who conducts, either as owner or employee, whether for hir- or not, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokeypokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of said prohibited games, is guilty of a misdemeanor * * *."

Section 331 provides that every person who knowingly permits any of the games mentioned in section 330 (and 330a, not here involved) to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in those sections.

Section 11 of article XI of the Constitution provides that "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

In 1903, the city and county of San Francisco enacted an ordinance, now section 288 of its Police Code, reading as follows: "It shall be unlawful for any person to keep or maintain, or visit, or to contribute to the support of any house or place where gambling is carried on or conducted, or to knowingly let or underlet, or transfer the possession of, any house or premises for use by any person for said purpose."

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1. Draw, and draw low ball, poker, when played for money, are gambling games (*People* v. *Philbin*, 50 Cal. App. 2d Supp. 859, 864 (123 P. 2d 159); *Lavick* v. *Nitzberg*, 83 Cal. App. 2d 381 (188 P. 2d 758)). Keeping and maintaining a place where those games were played gave rise to the raids.

2. The first contention of appellants is that section 288, Police Code, is in conflict with state law. Section 288 uses comprehensive language. Unlike section 330, Penal Code, it does not enumerate certain games, but deals with *gambling*—all gambling. If the section were applied to any of the 12 or more games prohibited by section 330, Penal Code, it would be to that extent in direct conflict with sections 330 and 331. *In re Sic.* 73 Cal. 142 (14 P. 405); *Ex parte Hong Shen*, 98 Cal. 681 (33 P. 799); *In re Hoffman*, 155 Cal. 114 (99 P. 517, 132 Am. St. Rep. 75); *In re Iverson*, 199 Cal. 582 (250 P. 681); *In re Simmons*, 199 Cal. 590 (250 P. 684); *Stanislaus, etc., Association* v. *County of Stanislaus*, 8 Cal. 2d 378 (65 P. 2d 1305); *In re Portnoy*, 21 Cal. 2d 237 (131 P. 2d 1).

Respondents concede this, but they couple their concession with the claim that *as to games not prohibited by state law there is no conflict and the ordinance remains valid and operative.*

The court in the Portnoy case, *supra* said: "The control of gambling activities is a matter concerning which local governments possess power to enact and enforce local regulations not in conflict with general laws, for the purpose of supplementing those laws. (Const., art. XI, section 11; *In re Murphy*, 128 Cal. 29 (60 P. 465); cf. *Mann* v. *Scott*, 180 Cal. 550, 556 (182 P. 281); *In re Hoffman*, 155 Cal. 114 (99 P. 517, 132 Am. St. Rep. 75.)."

Neither draw, nor draw low ball, poker, is prohibited by state law, hence respondents contend that section 288 Police Code, when invoked against places where those gambling games are played as it was here, is not in conflict with sections 330 or 331, Penal Code, or any other state law. We are satisfied that this position is supported by the authorities.

The early case (1887) of *In re Sic*, 73 Cal. 142, *supra*, involved an ordinance of the city of Stockton, comprising seven sections, dealing with opium smoking. Section 3 was held to be a duplication of state law, therefore in conflict therewith and unconstitutional. The court, however, was careful to say: "It will be observed that *we only hold that there is a conflict where the ordinance and the general law punish precisely the same acts.* We do not wish to be understood as holding that the sections of the ordinance which make criminal *other acts not punishable under the general law* are void because the legislature has seen fit to legislate upon the same subject." (Emphasis added.)

In the Iverson case, 199 Cal. 582, 586, *supra*, the court drove home the severability point by citing *In re Sic*, and repeating the last sentence just quoted.

Another case directly in point is *In re Murphy* (1900), 128 Cal. 29 (60 P. 465). There an ordinance of the city of Vallejo made it illegal to play "any game played with cards, dice or any device for money." The claim was made, as it is here, that the ordinance was void because in conflict with section 330, Penal Code. In denying a writ of habeas corpus the court said: "It may be that the ordinance includes all that is denounced in the statute, and it may also be that *it includes much more.* The defendant was convicted for playing the game of 'keno' * * * 'Keno' is not mentioned in the code. * * * *Since it was competent for the city, by ordinance, to prohibit all games not denounced by the statute, lack of jurisdiction is not made to appear* * * * The ordinance describes the games prohibited with sufficient definiteness. *It condemns all games of chance played for money. From this comprehensive description we must exclude those condemned by statute* * * * This method of defining offenses is not to be recommended as a model, but we cannot hold that it renders the ordinance void." (Emphasis added.)

Substitute "draw poker" and "draw low ball poker" for "keno" and you have this case. Appellants, indeed, concede that the language of the Vallejo ordinance is "in legal effect exactly like Section 288 * * *."

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3. Appellants claim that the Murphy case and the Portnoy case, *supra*, are irreconcilable one with the other. As we have just seen, the Vallejo ordinance and the San Francisco ordinance are in legal effect exactly alike. The same parallel cannot be drawn between the San Francisco ordinance (in this case), *which is simple*, and the Riverside County ordinance (in the Portnoy case), *which was complicated*. *People v. Commons*, 64 Cal. App. 2d Supp. 925 (148 P. 2d 724), involved a Los Angeles ordinance prohibiting concealed weapons. It was contended that the ordinance duplicated the state law and was therefore conflicting. The Portnoy case was there relied on by the defendant, just as it is here on the claim that the Los Angeles ordinance was inseverable. The court at page 935 said with respect to the Portnoy case: "But the ordinance there in question was, as the court suggests, complicated with the disentanglement of valid from invalid provisions was difficult. Here we see no such difficulty." The court then goes on to say that it is necessary simply to exclude from the operation of the ordinance such of its provisions as are covered by the state law. "This," says the court, "seems to us no more difficult than the exclusions necessary to be made from the ordinances upheld in the cases above cited." This reference is addressed to the Murphy, Hoffman, Iverson and Simmons cases, *supra*, which are cited at page 934 of 64 Cal. App. 2d in support of the following statement: "The fact that the ordinance is so framed that its entire prohibition, including both the valid and the invalid parts thereof, is stated by the same words, does not necessarily show that the valid part is inseparable from the invalid * * *." The Commons case contains an excellent discussion of this whole subject and we are in complete agreement with Judge Shaw's treatment therein of these questions of severability and adopt it as our own.

It is difficult for appellants to sustain their contention that the Portnoy case has weakened the authority of *In re Murphy*, or is inconsistent with it, in view of the fact that the former cites the latter as a live precedent. *In re Murphy* has been followed also in the Hoffman, Iverson and Commons cases, *supra*, and in *Ex parte John*, 17 Cal. App. 58,

64 (118 P. 722), and *Witt v. Klimm*, 97 Cal. App. 131, 134 (274 P. 1039), and it seems never to have been criticized. Because it is parallel with the present case we are bound to follow it.

4. In the Sic case, 73 Cal. 142, *supra*, the possibility of double jeopardy arising from prosecutions under both state law and ordinance appears as one of the reasons for the conflict rule. That could not happen here, since there could be no prosecution under section 331, Penal Code, for keeping or maintaining a place where draw poker is played, as "draw" is not prohibited by section 330 (see *Monterey Club v. Superior Court*, 48 Cal. App. 2d 131 (119 P. 2d 349)).

Nor could there by any such conflict between section 288 Police Code, and section 318, Penal Code, since the former prohibits keeping and maintaining a gambling house while the latter prohibits prevailing upon another to enter one. Under 318 it is not sufficient merely to prove invitation, but "prevailing" must be proved (*In re Chase*, 119 Cal. App. 432, 434 (6 P. 2d 577); *People v. Chase*, 117 Cal. App. Supp. 775, 779 (1 P. 2d 60)). The acts denounced by the two sections are entirely different.

These considerations furnish further reasons why no inseverability problem is presented.

5. Lastly, appellants contend that the legislation is unreasonable and oppressive. They concede that a municipality may properly *regulate* gambling, but argue that it is unreasonable to *prohibit* (by legislation against the maintenance of gambling houses) games which the state itself has not seen fit to prohibit, such, for instance, as draw poker.

In *ex Parte Tuttle*, 91 Cal. 589 (27 P. 933), the Supreme Court definitely held that gambling in the various modes may be either suppressed and prohibited or merely regulated, and that "a wide discretion is committed to the law-making body." That case contains strong language respecting the state's policy on the subject of gambling in general. Several later cases have spoken on the same subject. In *People* v. *Haughey*, 48 Cal. App. 2d 506, 511 (120 P. 2d 121), this court said: "The policy of the state toward commercial gambling is clear and unequivocal. A mere superficial reference to

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the Penal Code reveals that commercial gambling in all of its phases has been uniformly condemned for many years." To the same effect is *People v. Sullivan*, 60 Cal. App. 2d 539, 542 (141 P. 2d 230), where numerous cases are cited.

This general policy of the state finds expression in section 318, Penal Code, just discussed. Section 330 makes it unlawful to play 12 or more specified games and section 331 makes it unlawful for anyone to permit *such specified games* to be played in any house owned or rented by him. Section 318, on the other hand, makes it unlawful to prevail "upon any person to visit any room, building, or other places kept for the purpose of gambling • • •" It is "an indirect, partial, protection of the public" against *all* gambling whether outlawed by section 330, or not. (*People v. Philbin*, 50 Cal. App. 2d Supp. 859, 864 (123 P. 2d 159).)

In *Ex parte McClain*, 134 Cal. 110 (66 P. 69, 86 Am. St. Rep. 243, 54 LRA 779), an ordinance was attacked as is section 288 on the ground that it was unreasonable. At page 111 the court said: "It may be concluded • • • that in a reasonable exercise of its police powers a municipality may pass any ordinance in furtherance of the avowed general policy of the national and state government. In this regard our cities and counties draw their power, not from legislative permission, but from the direct grant of the constitution itself, which, by section 11 of article XI, empowers them to make and enforce within their limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

Section 288, Police Code, falls squarely within the doctrine of the McClain case. Its provisions against keeping or maintaining a place where gambling is carried on are directly in furtherance of the avowed general policy of the state. By section 318, Penal Code, the Legislature puts this policy into action by prohibiting any person to prevail upon another to enter a place where gambling *of any kind* is carried on; by section 288 the municipality gives expression to the same state policy by prohibiting the keeping or maintenance of such a place.

The case of *In re Hall*, 50 Cal. App. 786 (195 P. 975), relied on by appellants, is readily distinguishable since there exists no such public policy with respect to dancing—the

subject of the Pasadena ordinance held invalid in that case. Gambling and dancing are, of course, altogether different.

The orders are affirmed.

GOODELL, *J.*

Nourse, P. J., and Dooling, J., concurred.

Filed March 29, 1949.

WALTER S. CHISHOLM,
Clerk.

"EXHIBIT B"

(Title of Court and Cause)

Nos. 375920-375921

"Filed in Open Court May 25, 1948. Martin Mongan, Clerk, by E. Roper, Deputy Clerk"

Memorandum Opinion

There are two actions with which the Court is here concerned. One seeks to prohibit the Municipal Court of the City and County of San Francisco from proceeding to try certain arrested persons upon charges of keeping and maintaining a house and place where "draw poker" and "low-ball poker" are played in alleged violation of Section 288 of the Police Code which provides as follows:

> "It shall be unlawful for any person to keep or maintain or visit or to contribute to the support of any house or place where gambling is carried on or conducted, or to knowingly let or underlet or transfer the possession of, any house or premises for use by any person for said purposes."

The other action seeks an injunction against the District Attorney and the Chief of Police and President of the Police Commission from further raids and arrests on the identical charges. Obviously, to enjoin arrest upon other charges is not involved.

The arrested persons heretofore adverted to were taken into custody by the police from certain premises located at

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30 Turk Street in this City and County, known as the "Menlo Social Club" on the twenty-ninth day of April, 1948.

It is contended by the plaintiff in Action Number 375921, which is the complaint for injunction, that the Menlo Social Club, Inc., a corporation, is duly organized and existing as such by virtue of the laws of this State, and that it maintains club-rooms at the above described premises where its members may play draw poker and draw low-ball poker. The complaint further alleges that the defendants, namely, the District Attorney, the Chief of Police, and the President of the Police Commission, raided the premises of the plaintiff and caused the arrest of a large number of persons upon charges of violating Section 288 of the Police Code which Section has heretofore been set forth herein. It is further alleged that the defendants again raided the premises on the fourth day of May, 1948, arresting a large number of persons upon the same charges. The complaint also contains an allegation that the defendants announced in the public press that the premises will be both raided and re-raided and that Mr. Remmer, the President of the plaintiff corporation, "might as well get out of town."

It is well-settled in this State that the enforcement of a Municipal Ordinance such as Section 288 of the Police Code may be enjoined (San Diego Tuberculosis Association, a corporation vs. The City of East San Diego, 186 Cal. 252).

However, such powers should normally not be used to secure a declaratory judgment which is what, in effect, the plaintiff and petitioner in these proceedings is asking this Court to grant. Before such power is exercised, the unconstitutionality of the Ordinance must appear clearly, palpably and obviously.

There is substantial authority that the invalidity of a Statute must be established before equity will intervene to restrain a prosecution. If this rule is in effect in California, a point I do not determine in these proceedings, this alone would constitute grounds for the denial of the relief sought.

It is an elementary proposition that equity will not stretch forth a helping hand by way of injunction for the purpose of aiding one in the commission of a public offense. Hence,

a writ will not issue to protect a business which is conducted for an illegal purpose.

The discretionary powers of a Court of equity should not be utilized as has been heretofore pointed out, to secure what would in effect, be nothing more than a declaratory judgment.

In these cases I do not think, in view of the public importance and nature of this controversy, that the decision should rest solely upon grounds of legal discretion.

Accordingly, I base my decison, not alone in the exercise of the discretionary powers vested in the Court, but upon the additional ground that, in my opinion, Section 288 is not an unconstitutional Ordinance. In support of that see the case of *In re Iverson,* 199 Cal. 582 at page 586. This case appears to be the leading authority upon this subject and therein the Supreme Court clearly expresses the rule as to the effect of Ordinances covering subject matter already legislated upon, in part, by the Legislature. Therein the rule is stated as follows:

> "The only way the legislature can inhibit local legislative bodies from enacting rules and police regulations is by the state itself occupying the same legislative field so completely that legislation on the subject by local legislative bodies will necessarily be inconsistent with the state act. It does not follow that because the legislature has seen fit to make certain general rules applicable in all the cities and elsewhere in the state it has thereby impliedly prohibited the enactment of additional local regulations by municipalities in keeping with the purpose of the general law. So long as the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both may stand. There may be different regulations without a conflict. (Ex parte John, 17 Cal. App. 58 (118 Pac. 722); Ex parte Hong Shen, 98 Cal. 681, 684 (33 Pac. 799); in re Murphy, 128 Cal. 29 (60 Pac. 465); in re Hoffman, 155 Cal. 114, 117 (132 Am. St. Rep. 75, 99 Pac. 517). Where the legislature has assumed to regulate a given course of conduct by

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prohibitory enactments, a municipality with subordinate power to act in the matter may make such new and additional regulations in aid and furtherance of the purposes of the general law as may seem fit and appropriate to the necessities of the particular locality and which are not in themselves unreasonable."

In line with this view it has also been held that equity has no jurisdiction to enjoin threatened criminal proceedings under a statute enacted under the police power, although it is charged that the Statute is invalid and that a multiplicity of actions thereunder will injure and destroy civil and property rights of those alleged to be injured, and that the damages resulting will be irreparable where the defense thereto in a Court having jurisdiction of the offense is adequate and unembarrassed. *28 Am. Jur. Sec. 240* at page 423.

Accordingly, the relief prayed for in both actions is denied.

/s/ EDWARD P. MURPHY,
Judge.

Dated: May 25th, 1948.

(Title of Court and Cause)

No. 375920

"Filed May 29-1948. Martin Mongan, Clerk. By T. J. Duffy, Deputy Clerk"

NOTICE OF APPEAL AND NOTICE TO PREPARE TRANSCRIPT

To the Clerk of the above-entitled Court:

You will please take notice that petitioner hereby appeals to the District Court of Appeal, First Appellate District, of the State of California, from that certain judgment and order entered herein in favor of respondent and against petitioner on May 25, 1948, and from the whole thereof.

You further will please take notice that petitioner hereby requests that the Clerk's and Reporter's Transcript upon

such appeal be made up and prepared in accordance with law.

Dated this 28th day of May, 1948.

/s/ JOHN R. GOLDEN,
Attorney for Petitioner.

Receipt of a copy of the foregoing notice is hereby admitted this — day of May, 1948. (Copy mailed to District Attorney May 28, 1948 by Sect'y to J. R. Golden.)

—— ——,
Attorney for Respondent.

(3897)